

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH  
AT SRINAGAR**

...

Bail App no.96/2020

*Reserved on: 26.08.2021*

*Pronounced on: 24.09.2021*

**Bashir Ahmad Bhat**

..... Petitioner(s)

Through: Mr Mushtaq Ahmad Dar, Advocate

**Versus**

**Union Territory of Jammu and Kashmir**

.....Respondent(s)

Through: Mr Mir Suhail, AAG

**CORAM:**

**HON'BLE MR JUSTICE VINOD CHATTERJI KOUL, JUDGE**

**JUDGEMENT**

1. In this petition/application, preferred under Section 439 of the Code of Criminal Procedure, 1973, read with Section 482 Cr.P.C., and 435 Cr.P.C., petitioner/applicant seeks quashment of Order dated 24.08.2020, passed by the court of 3<sup>rd</sup> Additional Sessions Judge, Srinagar (for short "*court below*") in an application for grant of bail, as also grant of bail in his favour.
2. As is evident from perusal of lengthy application, comprising of 108 pages, applications for grant of bail had been earlier made by applicant before the court below, but he failed in those applications.
3. Objections/status report have been filed by respondent.
4. I have heard learned counsel for parties and considered the matter. I have gone through the record.
5. Learned counsel appearing for applicant has stated that allegations made and levelled against petitioner/applicant are false, frivolous and without any basis inasmuch as the prosecution story run contrary to postmortem report. He has submitted all what is mentioned in the instant application and cited the judgements reproduced in the

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application, which need not be reiterated again here, so as to save the precious time and avoid unnecessary lengthiness.

6. The prosecution story, as stated by respondent in its status/objections, is that on 12.01.1996, police station Pulwama received an information that at village Pishwara Keegam, some unknown gunmen entered into the house of one, Gh. Mohammad Sheikh S/o Muma Sheikh R/o Pishwara, Keegam, and locked all the family members in a single room, fired indiscriminately upon them with their illegally occupied arms/ammunition with an intention to kill them and as a result whereof, Dr. Ab. Rashid Sheikh and Gh. Nabi Sheikh sons of Muma Sheikh residents of Pishwara, got killed on spot while as one girl, namely, Mst Benazir D/o Gh Nabi Sheikh R/o Pishwara, received bullet injuries, and the gunmen fled from the spot. On receipt of information, case FIR No.11/1996 under Sections 452, 302, 307, 120-B RPC, 25/27 IA Act was registered. It is also stated by respondent that during course of investigation, the dead bodies were taken into custody and after completion of all formalities, the bodies were handed over to their legal heirs for last rites and the injured girl was taken by her legal heirs to hospital for treatment and regarding her injury memo was prepared. It is also submitted that during investigation, statements of witnesses were recorded and evidence collected, and the identity of gunmen was ascertained. The challan was produced before the court on 24.04.1997.
7. The order impugned, on its perusal, reveals that it has been passed by the Trial Court after making comprehensive discussion. The Trial Court has rightly said that applicant cannot seek and be given bail on parity because he is not similarly situated with the other accused persons.
8. Perusal of the instant application reveals that the judgements have been unnecessarily reproduced and discussed therein, making the application verbose.
9. The facts of the case made mention of and discussed by applicant in the instant application do not serve any purpose or render any help to the case of applicant as this Court while considering and deciding the bail application cannot discuss the veracity or substance of the prosecution case and witnesses adduced in the matter. The judgements reproduced by learned counsel for applicant in the instant

application can very well be considered at the final stage of the trial and not when an application for grant of bail is considered.

10. While considering the application for bail, it is necessary to take into consideration, first whether the accused would take up the trial without hampering it and secondly, whether he would subject himself to the verdict of the Court. The Court must also consider other factors such as, the serious nature of the crime and the gravity of the circumstances under which such an offence is alleged to have been committed, position and status of the accused with reference of the victim and witnesses, of repeating the offences, of jeopardizing his own life and other relevant grounds.
11. One of the main considerations in granting bail would be as to whether on the basis of evidence and the documents on which prosecution relies, it can be said that there are grounds to believe that the accused is involved in offence punishable with death or imprisonment for life and if there are reasonable grounds on which the accused are likely to be charged of murder, then the question of grant of bail would not arise. In the present case, applicant is facing trial for commission of offence punishable under Section 302 and there is a specific bar as regards grant of bail for offence under Section 302 RPC. From perusal of the record on the file as also application, no definite view can be made that there are reasonable grounds to believe that applicant is not guilty of alleged offences and no doubt applicant is facing trial for last five years but it is also a fact that he is facing trial for commission of offence of murder.
12. The considerations which normally weigh with the court in granting bail have been explained by the Supreme Court in **State vs. Capt. Jagjit Singh AIR 1962 SC 253**, and **Gurcharan Singh vs. State (Delhi Admn) (1978) 1 SCC 118**, which are: the nature and seriousness of the offence; the character of evidence; circumstances which are peculiar to the accused; a reasonable possibility of the presence of the accused not being secured at the trial; reasonable apprehension of witnesses being tampered with; the larger interest of the public or the State and other similar factors which may be relevant in the facts and circumstances of the case. The Supreme Court again in **Prasad**

***Shrikant Purohit vs. State of Maharashtra, (2018) 11 SCC 458***, has held:

“21) The law in regard to grant or refusal of bail is very well settled. The court granting bail should exercise its discretion in a judicious manner and not as a matter of course. Though at the stage of granting bail a detailed examination of evidence and elaborate documentation of the merit of the case need not be undertaken, there is a need to indicate in such orders reasons for prima facie concluding why bail was being granted particularly where the accused is charged of having committed a serious offence. Any order devoid of such reasons would suffer from non-application of mind. It is also necessary for the court granting bail to consider, among other circumstances, the following factors also before granting bail; they are:

(a) The nature of accusation and the severity of punishment in case of conviction and the nature of supporting evidence.

(b) Reasonable apprehension of tampering with the witness or apprehension of threat to the complainant.

(c) Prima facie satisfaction of the court in support of the charge.

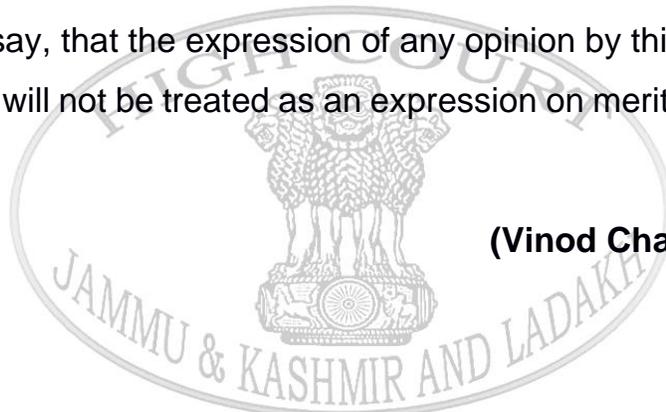
22) Before concluding, we must note that though an accused has a right to make successive applications for grant of bail, the court entertaining such subsequent bail applications has a duty to consider the reasons and grounds on which the earlier bail applications were rejected. In such cases, the court also has a duty to record the fresh grounds which persuade it to take a view different from the one taken in the earlier applications.

23) At the stage of granting bail, a detailed examination of evidence and elaborate documentation of the merits of the case has not to be undertaken. The grant or refusal to grant bail lies within the discretion of the court. The grant or denial is regulated, to a large extent, by the facts and circumstances of each particular case. But at the same time, right to bail is not to be denied merely because of the sentiments of the community against the accused.”

13. In the above case, the Supreme Court has held that the Court granting bail should exercise its discretion in a judicious manner and not as a matter of course and a detailed examination of evidence and elaborate documentation of the merits of the case has not to be undertaken inasmuch as grant or refusal of bail lies within the discretion of the court. It is well settled law that the court should refrain from appreciating the evidence while considering the bail application.
14. Since in the present case, the trial is in progress and if any finding or view is made by this Court while taking into account the statements of the witnesses or for that matter any finding on their credibility and evidential value at the stage of granting or refusing bail, it would seriously prejudice the prosecution case. The allegations against the accused are serious and same cannot be determined that the

allegations levelled against accused are either false or true. Reference in this regard is made to ***Kalyan Chandra Sarkar vs. Rajesh Ranjan @ Pappu Yadav and anr., (2004) 7 SCC 528; State of U.P. through CBI vs. Amarmani Tripathi, (2005) 8 SCC 21; Prahlad Singh Bhati vs. NCT, Delhi and anr, (2001) 4 SCC 280; Ram Govind Upadhyay vs. Sudarshan Singh and ors., (2002) 3 SCC 598; State of Maharashtra vs. Ritesh, (2001) 4 SCC 224; Panchanan Mishra vs. Digambar Mishra and ors., (2005) 3 SCC 143; Vijay Kumar vs. Narendrea and ors, (2002) 9 SCC 364; Anwari Begum vs. Sher Mohammad and anr., (2005) 7 SCC 326; Prasanta Kumar Sarkar vs. Ashish Chatterjee and ors., (2010) 14 SCC 496; and Ravindersingh vs. State of Gujarat (2013) 12 SCC 446.***

15. In the above backdrop, the judgements relied upon by learned counsel for applicant do not render any help to the case of applicant as being distinguishable in facts and circumstances of the present case. Resultantly, order impugned does not warrant any interference.
16. For the foregoing reasons, this is not a fit case for grant of bail. Bail application/petition along with connected CM(s) is, accordingly, **dismissed.**
17. Needless to say, that the expression of any opinion by this Court in the present case will not be treated as an expression on merits of the case.



**(Vinod Chatterji Koul)**  
**Judge**

**Srinagar**

24.09.2021

'Qazi Amjad, Secy'

Whether approved for reporting? Yes/No